



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Morrison-Knudsen Company, Inc.

File: B-237800.2

Date: May 2, 1990

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the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Agency did not mislead protester during discussions in stressing the importance of price where price accounts for 50 percent of the specified evaluation weight.
2. Although contracting agency did not point out all identified deficiencies in the protester's proposal during discussions, the protester was not materially prejudiced so as to justify sustaining its protest, where, even assuming the protester's proposal received the maximum total score in the affected technical areas, it still would not be competitive with the awardee's proposal.
3. Protest is denied where the protester was given a complete debriefing by the agency and additional evaluation documentation by the General Accounting Office (GAO) pursuant to its request for documents under section 21.3(f) of GAO Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1989), and only specifically contests the evaluation of certain subcriteria, the total value of which would not make the protester competitive with the awardee even if it received a perfect score for these items.
4. Award to the highest rated and highest priced offeror, instead of to the low-priced offeror, is unobjectionable where the awardee had the best price/quality point ratio.

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DECISION

Morrison-Knudsen Company, Inc. (M-K), protests the award of a firm, fixed-price contract to EBASCO Constructors, Inc., and Gust K. Newberg Company, a joint venture (EBASCO/Newberg), under request for proposals (RFP) No. DACA01-89-R-0001, issued by the Mobile District, United States Army Corps of Engineers (Corps), for construction of a rocket test facility. M-K contends that the Corps did not conduct meaningful discussions, misled M-K as to the significance of price, unreasonably evaluated its proposal, and made award to EBASCO/Newberg without adequately considering the price factor.

We deny the protest.

On December 6, 1988, the Corps issued this RFP for construction of a large rocket test facility at the Arnold Engineering Development Center, Tennessee. The construction project included the large rocket test facility, a rocket preparation building, and an exhaust plant modification. Detailed construction plans, specifications, and engineering drawings for the project were contained in several volumes which made up the complete solicitation package.

The RFP provided that award would be made to the most advantageous offeror within the competitive range, considering technical, price, and other factors. The RFP also advised that award could be made to other than the lowest priced offeror provided the higher priced offeror was "sufficiently more advantageous than the lowest offer so as to justify the payment of additional amounts." The RFP specified three technical/management evaluation criteria listed here in descending order of importance: (1) technical; (2) management, organization, personnel, and experience; and (3) schedule. Price, although not point scored, had equal weight to the technical/management criteria and was evaluated by computing and comparing each offerors' price/quality point ratio. This ratio was determined by dividing an offeror's total proposed price by its number of technical/management evaluation points.

On March 14, 1989, the Corps received five proposals in response to the RFP. A source selection evaluation board (SSEB), assisted by several engineering specialists, evaluated each proposal against the RFP criteria. After noting deficiencies and weaknesses in each proposal, the

SSEB determined all five proposals to be within the competitive range. The Corps conducted oral discussions with each offeror from April 17 to April 21, advising offerors of various weaknesses and deficiencies in their proposals. Further discussions were conducted with offerors from June 5 to June 9, because of an RFP amendment which reduced the scope of work. Best and final offers (BAFO) were received from four offerors on July 13.1/

The SSEB evaluated the offerors' BAFOs and ranked EBASCO/Newberg's technical proposal first with a consensus technical score of 5,111 out of a possible 6,000 points for the three technical/management related criteria. M-K's proposal was ranked third with a consensus technical/management score of 4,072 points. M-K proposed the lowest fixed-price of \$167,250,000, while EBASCO/Newberg's price of \$173,992,977 was the highest submitted. After computing the price/technical quality point ratio, EBASCO/Newberg was ranked first overall with a ratio of 34.04. M-K ranked third with a ratio of 41.07.

Under the technical factor, offerors were required to establish their competence in the following special items of construction: (a) ASME [American Society of Mechanical Engineers] code fabrication, (b) instrumentation and controls, (c) test area controller, (d) facility testing, (e) large concrete structures, (f) steam generation/distribution system, (g) system alignment, (h) steam control valve system, and (i) piping systems. EBASCO/Newberg's point score for each technical item was the highest or equal to that received by any offeror.2/ Moreover, EBASCO/Newberg received an outstanding rating for each of the items, except for the large concrete structures item where it received a neutral rating.3/ On the other hand,

1/ One offeror elected not to submit a BAFO.

2/ On some items, EBASCO/Newberg's point score was the same as some other offerors.

3/ The Corps regarded a neutral rating, denoted by "0," to indicate that the proposal covered all items listed in the RFP at least reasonably well, demonstrated understanding, recognition of problems, and complied with plans and specifications, although a proposal with a neutral rating could contain either a number of weaknesses or a small number of easily correctable deficiencies.

M-K received a neutral rating for each of these items, except for the steam generation/distribution system and steam control valve system items, where it received negative ratings^{4/}, and for the system alignment item where it too received an outstanding rating.

Under the management factor, proposals were rated for their proposed organization, supervisory personnel, quality control, previous experience, and specialized experience. Here, EBASCO/Newberg's proposed organization, quality control, and specialized experience received outstanding ratings, while the remaining categories were rated neutral. M-K was rated neutral in each of these categories. For the schedule factor, EBASCO/Newberg and M-K both were rated neutral.

Because EBASCO/Newberg was the highest ranked offeror in the technical and management areas and had the best price technical ratio, the SSEB recommended award to EBASCO/Newberg. The source selection authority then selected EBASCO/Newberg for award, based on his integrated assessment of the proposals, because of EBASCO/Newberg's significant evaluated advantages, high technical/management scores and best quality point/price ratio.

Award was made to EBASCO/Newberg on November 9.^{5/} This protest followed. On March 19, 1990, the Corps authorized contract performance determining that it was not in the best interest of the government to delay performance under the contract.

M-K contends that it was deterred from improving its technical proposal because during discussions the Corps repeatedly emphasized the importance of price. The government should not consciously mislead an offeror into lowering the evaluated quality of its proposal. See Unisys Corp., B-231704, Oct. 18, 1988, 88-2 CPD ¶ 360. The record here indicates, however, that the Corps did nothing improper

^{4/} A negative rating denotes a proposal which "contains deficiencies which are significant and offset/override positives in the proposal."

^{5/} This was a conditional award subject to the enactment of a revised project authorization by Congress and continued availability of funds which Congress approved on November 30.

in advising M-K of the significance of price during discussions. Indeed, the RFP assigned equal weight to price and technical factors. We find M-K's decision to concentrate its efforts on reducing its price at the expense of not improving its technical proposal was an exercise of its own business judgment and proposal preparation strategy. Hughes Aircraft Co., B-222152, June 19, 1986, 86-1 CPD ¶ 564.

M-K also argues that the Corps did not conduct meaningful discussions with it because the Corps did not advise M-K of all the deficiencies contained in its proposal until the debriefing after award. Although agencies are not obligated to afford offerors all-encompassing discussions, or to discuss every element of a proposal that has received less than the maximum possible score, the requirement for meaningful discussions requires agencies to advise offerors of deficiencies in their proposals to afford them an opportunity to revise their proposals to fully satisfy the government's requirements. Syscon Servs., Inc., 68 Comp. Gen. 698 (1989), 89-2 CPD ¶ 258.

The Corps contends that very detailed and specific discussions were conducted with M-K, as is evidenced by M-K's improved technical rating after BAFOs, but that, within the context of this procurement, pointing out the details of each deficiency and weakness in M-K's proposal would have been improper. The Corps states that, due to the complexity of the procurement, the RFP contained very detailed and specific specifications and a clear description of what offerors were required to provide in their proposals. Therefore, the Corps contends that a more specific approach in discussions was not required and may have resulted in technical leveling.^{6/}

We agree with the Corps that because of the detailed specifications and proposal instructions in the RFP, the Corps was not obligated to conduct all-encompassing discussions and point out every evaluated weakness in M-K's

^{6/} Federal Acquisition Regulation (FAR) § 15.610(d)(1) (FAC 84-16) prohibits technical leveling, which is defined as helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussions, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal.

proposal. See Syscon Servs., Inc., 68 Comp. Gen. 698, supra. With three exceptions (discussed below), the record indicates that the Corps generally led M-K into the areas of its proposal which were considered weak, deficient, or in need of amplification.

For example, under the facility testing subcriterion, a list of weaknesses was documented by the evaluators that negatively reflected on M-K's demonstrated understanding of this item. During discussions the Corps advised M-K that its proposal was evaluated as very marginal for understanding of the scope of the testing requirements. This was sufficient to apprise M-K of the Corps' concerns with M-K's response to this subcriterion.

For most of the other subcriteria, all of M-K's evaluated deficiencies were pointed out, and M-K was sufficiently apprised and led into the areas of its proposal which were considered weak or in need of amplification. Consequently, except for the three items discussed below, the Corps satisfied its obligation to conduct meaningful discussions.

However, we find that the Corps failed to advise M-K of all the evaluated deficiencies in its proposal under the technical subcriteria, ASME code fabrication, steam generation/distribution system, and steam control valve system and because of this failed to satisfy its obligation to conduct meaningful discussions. FAR § 15.610(c) (FAC 84-16). As previously noted, M-K's final proposal received negative ratings in two of these technical areas. That is, although the initial evaluation summaries show the evaluators found certain problems with M-K's proposal on these three items, which were specifically labeled as deficiencies, as opposed to weaknesses, they were not mentioned or even hinted at during discussions.

For example, on the steam control valve system subcriterion, the Corps only advised M-K during discussions that the proposal did not demonstrate an understanding that this is a performance specification. However, the record shows that other evaluated and labeled deficiencies were not pointed out, even though these ultimately contributed to M-K's negative rating for this item.^{7/}

^{7/} These other evaluated deficiencies of the steam control valve system subcriterion included offeror's failure to address major portions of this item, including "system functional understanding, system integration, system analysis submittal, component availability, . . . successful (continued...)

Similarly, on the steam generation/distribution system subcriterion, where M-K was also ultimately given an negative rating, certain identified and labeled deficiencies were not pointed out.^{8/} Finally, on the ASME Code Fabrication subcriterion, the evaluated and identified deficiencies concerning the fabrication of the steam ejector were not pointed out. Thus, it appears that in each of these areas the Corps did not point out all of the deficiencies, so as to satisfy its obligation to conduct meaningful discussions.

Despite this conclusion, however, we will not sustain a protest that an agency failed to conduct meaningful discussions unless the protester is materially prejudiced by the government's actions. Huff & Huff Serv. Corp., B-235419, July 17, 1989, 89-2 CPD ¶ 55. In this instance, M-K was not materially prejudiced by the Corps' actions because even if M-K was given the maximum score in these three areas, its proposal still would have received a significantly lower rating than EBASCO/Newberg's proposal. In this regard, M-K would have needed to gain approximately 840 technical/management points in order to have equaled the price/technical point ratio of EBASCO/Newberg.^{9/} However, M-K could only have gained 296 points in these areas.^{10/} Moreover, since the RFP gave equal weight to price and technical factors and reserved the government's

^{7/}(...continued)
system installation," valve sequencing and compatibility to the test area controller. Other evaluated deficiencies were M-K's failure to "indicate any control relationship for the steam control valves and their operation with other parts of the system."

^{8/} These deficiencies included M-K's failure to discuss all fabrication procedures and procedures to minimize stress in piping systems and M-K's failure to demonstrate its awareness of the logistical problems in shop fabrication and transportation.

^{9/} We arrived at this amount by dividing M-K's BAFO price, \$167,250,000, by 4,912, which equals 34.04, EBASCO/Newberg's winning ratio score, and by subtracting M-K's technical score of 4,072 from 4,912.

^{10/} This was determined by subtracting the points M-K received in these areas from the total possible points that were available in these areas.

right to make award to other than the lowest offeror, we are not persuaded that M-K's proposal, which was only 3.88 percent lower in price than the awardee's price, would have been any more competitive against EBASCO/Newberg's superior rated proposal, even with these additional points. Therefore, we conclude that M-K was not competitively prejudiced to justify sustaining its protest of the Corps' failure to conduct meaningful discussions in these three areas. See tg Bauer Assocs., Inc., B-229831.6, Dec. 2, 1988, 88-2 CPD ¶ 549.

M-K also makes various claims that the Corps unreasonably evaluated its technical/management proposal. For example, M-K argues that in evaluating its proposal the Corps improperly considered certain claims under prior contracts in rating M-K's prior experience. However, the Corps reports that even though M-K's contract claims were mentioned by the evaluators, the proposal was not downgraded on this basis.^{11/} Moreover, the SSEB scored all offerors equally for prior experience, which we find was a reasonable evaluation. See Donald D. Jackson, B-230194 et al., Apr. 29, 1988, 88-1 CPD ¶ 419.

M-K also alleges that its proposal was downgraded or not given sufficient credit for noting design deficiencies and cost reductions. However, the Corps reports, and there is no evidence to the contrary, that no offeror was rewarded or penalized for pointing out alleged design deficiencies and cost reduction suggestions because the RFP evaluation criteria made no provision for such evaluation.

M-K next contends that the disparity in the individual scores indicates that its proposal was evaluated unreasonably. However, it is not unusual for individual evaluators to reach disparate conclusions when judging competing proposals, since both objective and subjective judgments are involved. See Stat-a-Matrix, Inc. et al., B-234141 et al., May 17, 1989, 89-1 CPD ¶ 472. Moreover, as outlined above, the point scores are the consensus total of six technical evaluators, who unanimously and individually scored M-K's proposal significantly lower than EBASCO/Newberg's technical/management proposal.

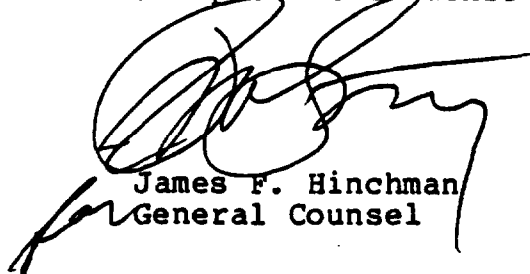
^{11/} The SSEB also found that M-K's proposal revealed in-depth company involvement, a capable work force, and that M-K possessed wide and vast experience in complex projects.

As noted by the Corps, M-K has not specifically challenged many of the deficiencies and weaknesses in its technical/management proposal, even though it was provided a very detailed debriefing and even though much of the documentation regarding its evaluation was provided to it by this Office pursuant to its request for documents pursuant to section 21.3(f) of our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1989). See Unisys Corp., B-231704, Oct. 18, 1988, 88-2 CPD ¶ 360, at 6.

The only other specific disputes with the technical evaluation, raised by M-K, concern the Instrumentation and Controls and Test Area Controller subcriteria. Not only does M-K not respond, in its post-conference comments, to the Corps explanation of its evaluation of these areas, but also the maximum point total that M-K could have gained in these areas is only 254 points, which, even when added to the 296 points in the technical areas where meaningful discussions were not conducted, would still not be sufficient to approximate EBASCO/Newberg's quality point ratio. See tg Bauer Assocs., Inc., B-239831.6, *supra*. Thus, we find no basis to find improper or unreasonable the technical/management evaluation.

Finally, M-K argues that EBASCO/Newberg's higher priced proposal was not significantly more advantageous than M-K's low offer, and that the increased costs in EBASCO/Newberg's offer represented increased mobilization costs, rather than anything of tangible benefit. We disagree. The difference in total price between the two offerors was only 3.88 percent and EBASCO/Newberg's proposal was rated and considered significantly superior to M-K's in the most important evaluation areas as was reflected in significant point score differences. Moreover, the Corps clearly took M-K's lower price into account by virtue of its use of the cost/technical ratio formula specified in the RFP, which we have recognized is a proper method to determine which proposal is most advantageous to the government. See Fort Wainwright Developers, Inc. et al., 65 Comp. Gen. 572 (1986), 86-1 CPD ¶ 459.

The protest is denied.



James F. Hinchman
General Counsel